PART IV

Section—2-C (ii)

STATUTORY ORDERS ISSUED BY THE STATE GOVERNMENT UNDER THE CENTRAL ACTS AND STATE ACTS.

GOVERNMENT OF MYSORE

FOOD, CIVIL SUPPLIES AND LABOUR SECRETARIAT

INDUSTRIAL DISPUTE BETWEEN THE WORKMEN AND THE MANAGEMENT OF MANGALORE CITY MUNICIPALITY, MANGALORE.

Award of the Labour Court, Mangalore—Published.

Read the following papers :—

(1) Letter No. A/ID 19/72-73, dated 30th September 1972 from Sri B. Hanumanthaiah, Presiding Officer, Labour Court, Mangalore.

BEFORE THE LABOUR COURT AT MANGALORE.

Dated: 30*th September* 1972.

Reference (ID) (LCM) No. 19 of 1971.

Present :

B. HANUMANTHAIAH, B.SC., LL.B.,

Presiding Officer.

Between :—

The Workmen, represented by the General Secretary, Municipal Employees' Union, Mangalore .. I Party.

and

The Management of Mangalore City Municipality, Mangalore II Party.

AWARD

The Government of Mysore being of opinion that an Industrial Dispute exists between the workmen and the management of Mangalore City Municipality, Mangalore, referred the said dispute to this Labour Court at Mangalore under Section 10-1(c) of the Industrial Disputes Act, 1947 by an Order No. FCL 359 LLD 71, dated 4th August 1971, for adjudication. The points of dispute as specified in the order of reference are the following:

> "Is the Management of Mangalore City Municipality justified in terminating the services of Sri Edwin Chalat, driver, with effect from 27th June 1969?
>
> If not, to what relief the worker is entitled?".

2. The first party is the workman represented by the General Secretary, Municipal Employees' Union, Mangalore. The second party is the management of Mangalore City Municipality, Mangalore. The first party is represented by its learned representative Sri K. Shashidhar Rao. The second party is represented by its learned representative Sri F. J. M. Pinto. The first party has filed its statement on 21st September 1971. The second party has filed its counter statement on 21st December 1971.

3. The Health Officer, Mangalore City Municipality, Mangalore, has by his Order, dated 26th June 1970, which is marked as Exhibit M-13, held that Sri Edwin Chalat, Public Health lorry driver, is guilty of the following charges, and has directed that he shall be removed from service with effect from 27th June 1970, *i.e.*, the date from which he was kept under suspension.

(1) That on 25th June 1969, Sri Edwin Chalat, failed to carry out the instructions given by the Health Officer to convey the rubbish to Mudushedde.

(2) That on 25th June 1969, he failed to instruct the lorry mazdoors to load the lorry MYX 5472 to its full capacity.

(3) That he misconducted with the Health Officer on 25th June 1969 when enquired about the lorry trips of P.H. Vehicle MYX 5472.

(4) That he attempted to destroy the evidence to save himself from the guilt on 25th June 1969.

(5) That he has caused pecuniary loss to the Municipality by making trip with only 1/6 of lorry load.

(6) That he has neglected his duties.

4. In the claim statement it is pleaded as follows by the worker Sri Edwin Chalat. Edwin Chalat was working as the driver of Public Health Vehicles under the second party management. He was kept under suspension from 26th June 1969 by an order of the Municipal Health Officer and this suspension period continued from 26th June 1969 till 26th June 1970 on which date his services were wrongfully terminated by an illegal and unlawful order of dismissal, passed by the Health Officer. The Health Officer had no authority to keep him under suspension for any period exceeding three months and the action taken against the workman during the course of such suspension is illegal, unlawful and without jurisdiction. That an enquiry is purported to have been conducted into the charges levelled against the workman, and the said enquiry is bad in law and opposed to the principles of natural justice and equity in as much as it was conducted by the very same Municipal Health Officer who claims to have detected the alleged misconduct. It is alleged that the enquiry is vitiated for the following reasons : (i) The charges were vague and lacked clarity, (ii) the enquiry was conducted in utter violation of the principles of natural justice, (iii) the findings of the enquiry officer are not supported by any evidence and are contrary to the evidence on record fraught with unfair labour practice and victimisation for the trade union activities of the worker. It is also alleged that the punishment is grossly disproportionate and unconscionable and no reasonable man would have come to such conclusion. It is also alleged that no proper opportunity was given to the worker to defend himself and the enquiry was biased as the Enquiry Officer was an interested and biased person bent upon holding the charges as proved against the workman. It is also stated that the worker was not allowed to cross-examine the management witnesses and he was also made to sign the enquiry papers under duress. It is therefore prayed that the enquiry proceedings may be set aside as illegal, unlawful and unjust and order directing that the workman Sri Edwin Chalat be reinstated with full backwages, continuity of service and other consequential benefits, may be passed.

5. In the counter statement it is stated by the management that the suspension of the workman from 26th June 1969 till 26th June 1970 was proper and lawful and the termination of service has been done after due enquiry and after notice to the workman. The Health Officer is competent to hold enquiry and pass necessary orders. That the charges were all specific and borne out by oral and documentary evidence, and the charges being of a grave nature and amounting to dereliction of duties, the punishment is absolutely reasonable. It is stated that the I Party was given an opportunity to defend himself, and it is denied that the worker was not allowed to cross-examine the witnesses of the management. It is stated that the worker did not cross-examine the witnesses and he did not examine any witness on his behalf. It is therefore prayed that the

6. On these pleadings the following additional issues have been raised :—

(1) Whether the suspension of the first party workman from 26th June 1969 till 26th June 1970 is legal ?

(2) Whether the domestic enquiry held against the first party workman on the charges levelled against him is fair and proper being in conformity with the principles of natural justice ?

Or

Whether the domestic enquiry is vitiated in view of the grounds taken in paras 3(*c*) (*d*) (*e*) (*f*) (*j*) (*k*) of the claim statement ?

(3) Whether the charges leveled against the first party workman are proved ?

(4) Whether the punishment of termination of the service of the first party workman is grossly disproportionate to the gravity of misconduct and is unconscionable ? If so, what will be its effect on this reference ?

(5) What Award ?

7. The Enquiry Officer Dr. C. R. Krishna Moorthy is examined as MW1. Exhibit M-1, dated 26th June 1969 is the office copy of the Memo. keeping the worker under suspension and it is served on the worker on 27th June 1969. Exhibt M-3, dated 31st July 1969 is the explanation submitted by the worker. Exhibit M-4, dated 20th September 1969 is the notice of enquiry served on the worker. Exhibit M-9, dated 16th August 1969 is the notice issued to the worker stating that the enquiry would be held on 27th August 1969. Thereafter the enquiry was adjourned to 30th August 1969. Exhibit M-10 is the statement of the worker, dated 30th August 1969. Dr. C. R. Krishna Murthy has stated that the Sanitary Maistry Bejmi Sequeira, the Sanitary Inspector, Sri V. Gangadhar and another Sanitary Maistry K. Shivarama were examined as management witnesses and he examined them. Forther he has stated that Exhibits M-6, M-7 and M-8 are the statements of the witnesses for the management examined in the domestic enquiry. Further he has stated that the statements of the witnesses for the management and statement of the worker were recorded by Sri Sanjiva Malli in his presence and on 16th March 1970 he made a provisional order as per Exhibit M-11 and it was served on the worker to show cause as to why the punishment of dismissal should not be implemented, and the worker submitted his explanation as per Exhibit M-12, and thereafter he passed the Order Exhibit M-13 and the order is served on the worker on 3rd July 1970. He has stated that full opportunity was given to the worker to defend himself and the worker was given

an opportunity to cross-examine the witnesses examined at the domestic enquiry.

8. Sri K. Sanjeeva Malli, Assistant Health Officer, who recorded the statements of the witnesses in the domestic enquiry, is examined as MW2. He has stated that on the day of enquiry, the enquiry officer requested him to write down the statements and so he wrote down the statements. He has also stated that the exhibits M-6, M-7 and M-8 are the statements of the witnesses Sri Bejmi Sequeira, K. Shivarama and V. Gangadhar respectively. He has also stated that Exhibit M-10 is the statement of the worker. Further, he has stated that the enquiry was conducted by the Health Officer personally.

9. The Sanitary Maistry, Bejmi Sequeira, is examined as MW3. He has sworn to the effect that his statement was recorded during the enquiry and it is Exhibit M-6 and it was read over to him. The Sanitary Inspector Sri V. Gangadhar is examined as MW-4. He has stated that Exhibit M-8 is his statement and its contents are correct. He has also stated that Edwin Chalat was present when his statement was recorded. The other Sanitary Maistry K. Shivarama is examined as MW-5. He has stated that Exhibit M-7 is his statement and it is in the hand writing of Sri Sanjiva Malli, but the enquiry was held by the Health Officer.

10. The worker Sri Edwin Chalat is examined as WW1. He has stated that he was in charge of Lorry No. MYX 5472. He was kept under suspension by the second party as per exhibit M-1, dated 26th June 1969. He has also stated that charges were framed against him as per Ex. M-2. He denies that he has failed to carry the instructions issued by the Health Officer, to carry the rubbish to Mudushedde. He has also stated that Ex. M-3 is his explanation. He has stated that this statement was not read over to him and similarly the statements of Bejmi Sequeira and V. Gangadhar were not read over to him. Thus he claims that the enquiry is not proper and legal.

11. It is necessary and useful to consider issues 2 and 3 together. The charges levelled against the workman are six, as mentioned in Ex. M-13. It is the case of the second party management that the workman Sri Edwin Chalat has failed to carry out the instructions of the Health Officer to convey the rubbish to Mudushedde, and he has misconducted when enquired by the Municipal Health Officer and he also attempted to destroy the evidence to save himself from the guilt. Charges (1), (3) and (4) refer to the above matter. The Health Officer Dr. C. R. Krishna Moorthy is the Enquiry Officer. He has not examined himself during the domestic enquiry.

The witnesses Sri Bejmi Sequeira, Sri Shivarama and V. Gangadhar do not speak to the effect that the worker misconducted when enquired by the Municipal Health Officer. They also do not speak to the fact of the destruction of the evidence by the worker. The learned representative for the management fairly conceded that the charges Nos. 3 and 4 have not been proved.

12. Charge No. 1 is as follows: "He has failed to carry out the instructions given by the Municipal Health Officer to convey the rubbish to Mudushedde." It is the case of the management that the worker Sri Edwin Chalat was directed by the Municipal Health Officer to take the lorry to the Municipal Office. The workman Sri Edwin Chalat has in his explanation Ex. M-3 stated that as per instructions, he was carrying two loads to Mudushedde and one load to Morgangate. In his statement Ex. M-10 before the Enquiry Officer he has stated that he was directed by the Health Officer to take the lorry to the Municipal Office. He has also stated that the Health Officer inspected his lorry while he was driving it near the Hospital to unload the rubbish at Morgangate. Further he has stated that after the lorry was inspected by the Municipal Health Officer, he unloaded the rubbish near Morgangate and he carried third trip to Moodushedde. Thus it is found that charge No. 1 is also not proved.

13. The other charges framed against the workman are the following:—

(1) On 25th June 1969, he failed to instruct the lorry mazdoors to load the lorry MYX 5472 to its full capacity.

(2) He has caused pecuniary loss to the Municipality by making trip with only 1/6th of lorry load.

(3) He has neglected his duties.

14. The case of the second party management is that on 26th September 1969 the driver Sri Edwin Chalat was instructed to remove the rubbish from the Bus-stand. He had been instructed by the Health Officer and also the Sanitary inspector to see that the lorry is fully loaded and to remove the rubbish from the busstand. But the driver did not supervise the work of the loaders and he was carrying only a part of the rubbish. The Health Officer inspected the lorry and then questioned the workman and the workman misconducted himself. It is also alleged that the lorry had been loaded only to its 1/6th capacity and three was sufficient rubbish in the bus stand and therefore the driver has neglected to perform his duties, and he has also caused pecuniary loss to the Municipality by making trip with only 1/6th of lorry load.

15. The learned representative for the first party workman contends that the enquiry is not properly held for the following reasons: The statements have not been read over to the worker. The statements have not been properly recorded. The charges are vague and the date on which the worker committed the act of misconduct is not specified in the charge. It is also urged that while recording the statement of MW5 he was questioned by Sri Sanjeeva Malli who was not the Enquiry Officer.

16. Ex. M-7 is the statement of MW5. It was recorded on 26th September 1969. It is true that MW5 has stated that he was questioned by Sri Sanjeeva Malli and he answered the same, and Sanjeeva Malli recorded the answer. It is also true that it is not recorded by Sri Sanjeeva Malli that the statement Ex. M-7 was recorded in the presence of the workman Sri Edwin Chalat. It is admitted that it was recorded in the presence of the Health Officer and the contents have been read over to the person who made the statement and he admitted the same. The workman Sri Edwin Chalat has also not signed the statement Exhibit M-7. The statement Ex. M-7 is recorded in Kannada language. It is mentioned in Ex. M-7 that the driver Edwin Chalat was asked to cross-examine the witnesses and he stated that he had no questions. MW5 has stated that he was examined in the presence of the first party workman. It is also proved that the statement was read over and it is admitted to be correct by the person who gave the statement. The mere fact that Sri Sanjeeva Malli has put questions to the witnesses does not amount to an illegality which vitiates the enquiry. It is clear that the Sanitary Maistri Shivarama has been examined in the presence of the driver Edwin Chalat, and Edwin Chalat was given opportunity to cross-examine the witness. The statement is recoded in the language known to the workman. It is in Kannada language. In these circumstances, I find that there is no force in the contention that the witness Sri K. Shivarama has not been properly examined.

17. Ex. M-10, the statement of the workman Sri Edwin Chalat, consists of eight sheets of paper. It is true that it is numbered only upto 10th page and thereafter it is not numbered. Each page is not signed by the workman Sri Edmin Chalat. The Enquiry Officer has also not signed on each sheet of paper. MW2 Sri K. Sanjeeva Malli has sworn that the statement Ex. M-10 was recorded by him and it is signed by the worker as per Ex. M-10(a). The workman Sri Edwin Chalat has stated that the enquiry was conducted by the Health Officer and the statement was recorded by Sri Sanjiva Malli. He has also stated that the enquiry was conducted in Kannada language and he knew what was being told. Further he has stated that Sri Sanjiva Malli recorded in

Kannada and read it over to him and took his signature. In these circumstances, I find that the fact that signature of the worker which is not taken at every page of his statement, does not lead of the inference that the statement is not properly recorded or the enquiry was not properly conducted.

18. It is also contended that it is not established that the statement of Bejmi Sequeira was recorded in the presence of the workman and it was read over to him. Ex. M-6 is the statement of Bejmi Sequeira recorded in the domestic enquiry. It is recorded in Kannada language. It is true it is not signed by the worker Sri Edwin Challat. It is also clear that the statement was read over by the witness himself and he admitted it to be correct. Sri Sanjiva Malli MW2, has stated that the workman was present and he was asked to cross-examine the witness. In view of the fact that Ex. M-6 is recorded in Kannada language, and the statement was given by the witness Bejmi Sequeira in Kannada Language, the mere fact that the statement was not read over to the workman is not sufficient to hold that the statement has not been properly recorded. The workman knew what was being told by the witness Sri Bejmi Sequeira. He has been afforded an opportunity to cross-examine the witness, but he did not cross-examine the witness.

19. The other witness examined is the Sanitary Inspector MW4. Exhibit M 8 is the statement of the Sanitary Inspector. It is true that there are certain defects in recording the statement of the sanitary inspector MW4. After recording his statement and after the driver stated that he had no question to put in cross examination, he has been examined in detail. It appears to me that he was cross-examined in detail on behalf of the management. The worker has not again been asked to cross-examine the witness regarding the facts got elicited from him. It can be said that the further statement made by the Sanitary Inspector in Ex. M-8. is not admissible. But the earlier statement made by him is admissible as evidence and it may be read as evidence, properly recorded in the presence of the workman. In the statement filed before Court by the first party it is of course alleged that no proper opportunity was given to him to cross-examine the management witnesses and he was not given opportunity to defend himself. But from the material placed now on record, it is clear that the driver Sri Edwin Chalat had been afforded sufficient opportunity to cross examine the witnesses on behalf of the management. Therefore, I find that there is no force in the allegation that the driver Sri Edwin Chalat has not been afforded sufficient opportunity to cross-examine the witnesses of the mangement and to defend himself.

20. The next question for consideration is whether the charges framed against the workman are vague and if any prejudice has been

caused to the workman. Since it is held that charges (1), (3) and (4) are not proved it is sufficient to consider the above contention with reference to the charges (2), (5) and (6). The charges No. (2), (5) and (6) as mentioned in the charge memo Exhibit M-2 are as follows:—(2) That on 25th June 1969, he failed to instruct the lorry mazdoors to load the lorry MYX 5472 to its full capacity. (5) That he has caused pecuniary loss to the Municipality by making trip with only 1/6 of lorry load, and (6) That he has neglected his duties. It is true that the date on which and with reference to the trip in which he failed to instruct the lorry coolies to load the lorry to its full capacity are not mentioned in the charge. It is also not mentioned how the loss is caused and what is the negligence on the part of the driver. But from the facts of the case it is clear that the driver workman was aware of the particulars of the charge. In his explanation Exhibit M-3 it is his contention that he was at no time instructed to supervise the loading and unloading work of the sanitary workers. Further in his statement Exhibit M-10 in the domestic enquiry, he has mentioned the particulars. He has also mentioned the number of the vehicle with which he had been entrusted. The date is also mentioned. Thus it is clear that though in the charge memo necessary details have not been furnished, the driver was aware of the particulars of the charge and no prejudice has been caused to him.

21. The learned representative for the workman urged that the material on record is not sufficient to hold that the driver has neglected his duties. It is urged that no evidence is placed to show that the lorry was loaded only to its 1/6 capacity though there was sufficient rubbish at the spot. The Sanitary Maistry Bejmi Sequeira, MW3, has stated that he was not present at the time when the lorry driven by Sri Edwin Chalat came to the bus-stand for removing rubbish and that he was not there even at the time of loading the rubbish, and he was not there at the time when the lorry left the bus-stand. He has stated that it is not possible for him to say how much rubbish was accumulated at the bus-stand. Thus the statement made by MW3 does not show what was the quantity of rubbish available and how much was loaded in the lorry. The Sanitary Inspector has in his statement Exhibit M-8 in the domestic enquiry stated as follows: I told the driver Edwin Chalat to get the entire accumulation of rubbish removed from the bus-stand. After supervising the loading work a little I went over to Rama Rao Galli as another was deputed there to remove the rubbish from the said Road. After about 15 minutes I again came to the bus-stand. But by the time I returned to the bus-stand the lorry MYX 5472 has already left the bus-stand after loading only a little portion of the rubbish accumulated in the bus-stand. Evidently the driver Edwin Chalat has got removed only about 1/6 of the capacity of the lorry." In his

cross-examination also MW4 has, before this Court, stated that he was present in the bus-stand when the lorry driven by Edwin Chalat came to the bus-stand. Further he has stated that as soon as the workers started loading, he left the bus-stand and returned to the bus-stand after about half an hour. It is true that he has seen the lorry at 10-30 a.m. near the municipal office. The statement of Sri Edwin Chalat, in the domestic enquiry as recorded in Ex. M-10 is as follows :

'ನನ್ನ ಲೋರಿಯ ಲ್ಲಿ ಅರ್ಧಲೋಡು ಕಸ ಮಾತ್ರ ಇತ್ತು. ಇಷ್ಟು ಕಸ ಕಡಿಮೆ ಏನು ಎಂಬುದಾಗಿ ಹೆಲ್ತಾಫಿಸರರು ಕೇಳಿದ್ದಕ್ಕೆ. ಲೋರಿ ಕೂಲಿಗಳು ಕಸವನ್ನು ಲೋರಿಗೆ ಪೂರ್ತಿ ತುಂಬಿಸಲಿಕ್ಕೆ ಕೇಳುವುದಿಲ್ಲ ಎಂಬುದಾಗಿ ಹೇಳಿದೆನು. ಆಗ ಹೆಲ್ತಾಫಿಸರರು ಆ ಲೋರಿಯನ್ನು ಕಸ ಸಮೇತ ಆಫೀಸಿಗೆ ತರಲಿಕ್ಕೆ ಹೇಳಿದರು. ನಾನು ಅವರು ಹೇಳಿದ ಮೇರೆಗೆ ಮುನ್ಸಿಪಲ್ ಹೆಲ್ತಾಫೀಸಿಗೆ ಲೋರಿಯನ್ನು ತಂದೆನು.'

22. The learned representative for the driver workman contended that the bus-stand is a busy place and it may be that the rubbish might have been collected after the lorry left the place and it cannot be found that all the rubbish that was available at the time of loading had not been loaded. Having regard to the statement made by the driver as recorded in Exhibit M-10, I find that there is no force in the contention that the rubbish might have accumulated after the lorry left the place. It is specifically stated by the driver that he told the Health Officer that the lorry mazdoors do not load the lorry to its full capacity. From the statement of MW4, it is clear that the lorry had been loaded only to its 1/6 capacity. Thus, it is proved that on 25th June 1969, the lorry driven by the driver Edwin Chalat, MYX 5472, had been loaded to its 1/6 capacity even though rubbish was available at the spot. On this material, the Health Officer, has found that the driver Edwin Chalat has failed to instruct the lorry mazdoors to load the lorry to its full capacity and has caused loss to the municipality and was negligent in his duties. It is true it is the Health Officer who first checked the lorry and instructed the driver to take the lorry to the Municipal Office. Ordinarily, he should have examined himself as one of the witnesses and the enquiry should have been conducted by a different person or authority. It is true that he has relied on his own observations in assessing the material that was placed before him. It is contended by the learned representative for the workman that the enquiry is vitiated because the enquiry officer was biased. It is not the case of the driver that there was any other motive for the enquiry officer against him. It is true that there are some defects in the enquiry. It may be that the enquiry Officer has also relied on his own observations made at the time of inspection in considering the material placed before him and in coming to the conclusion that the driver was negligent. But it cannot be said that the enquiry is vitiated and no other reasonable man would have come to the

same conclusion that the driver was negligent. The statement made by MW4, the Sanitary Inspector, and the statement made by Sri Edwin Chalat as per Ex. M-10 in the domestic enquiry are sufficient to come to the conclusion that on 25th June 1969 the lorry MYX 5472 driven by Sri Edwin Chalat had been loaded to its 1/6 capacity only even though there was rubbish available.

23. The learned representative for the workman contended that it is not one of the duties of the driver to see that the lorry is loaded to its full capacity and the only duty of the driver is to drive the vehicle. It is true that there is a sanitary maistry to supervise the work of loaders *i.e.*, the lorry mazdoors and it is his primary duty to see that the lorry is fully loaded. It is the duty of the lorry mazdoors to load the lorry to its full capacity. The Health Officer, MW1 Dr. C. R. Krishnamoorthy has stated that the duties of Sanitary Mazdoors, Bus-stand Maistries and Drivers are in writing. and the bus-stand maistry is partly responsible to see that rubbish is fully loaded in the municipal vehicle. He has stated that the driver also is responsible to see that the rubbish is entirely removed from the spot and loaded in the vehicle by the coolies, and that these are mentioned in the duties of the drivers. But no document is produced before this Court to show that the duties are mentioned in writing and they have been communicated to the driver. The sanitary inspector has stated that he told the driver Edwin Chalat to get the entire accumulation of rubbish removed from the bus-stand and after supervising the loading work a little, he went over to Rama Rao Galli as another was deputed there to remove the rubbish from the said road. Sri Edwin Chalat has not cross-examined the sanitary inspector in the domestic enquiry. It cannot be said that the statement made by the sanitary inspector that he had instructed the lorry driver Edwin Chalat to get the entire accumulation of rubbish removed from bus-stand is not ture. It is true that it is not shown that written instructions have been issued to the lorry driver Edwin Chalat to see that the lorry is loaded to its full capacity.

24. It is not the case of the management that the driver did not stop the lorry for the necessary period of time of enable the lorry mazdoors to load the lorry to its full capacity. From the facts on record, it can be safely concluded that the lorry driver, the lorry mazdoors and the sanitary maistry are responsible to load the lorry to its full capacity. The sanitary inspector has in his report Exhibit M-14 stated that the coolies have removed only 1/6 of the lorry load of rubbish from the bus-stand. He has complained against the lorry mazdoors also, but no action appears to have been taken as against the lorry mazdoors. I have earlier stated that in his statement Exhibit M-10, the driver Sri Edwin Chalat has stated that he

told the Helath Officer that the lorry mazdoors did not load the lorry to its full capacity. The learned representative for the driver urged that from this statement, it should not be found that the driver had been instructed to see that the lorry is fully loaded and that it was one of the duties of the lorry driver. Sri V. Gangadhar, the sanitary inspector, has definitely stated that he had instructed the lorry driver to remove the entire rubbish. Having regard to the statement made by the driver in Exhibit M-10 and having regard to the fact that the Sanitary Inspector Sri V. Gangadhar, has not been cross-examined by the driver, I find that the statement made by him that he had instructed the lorry driver Sri Edwin Chalat to remove the entire rubbish, cannot be held to be a false statement. Thus it is made out that the sanitary inspector had instructed the driver to remove the entire rubbish. Though there is nothing in writing which requires the driver to see that the lorry is loaded to its full capacity it was his duty to obey the instructions issued by the sanitary inspector Sri V. Gangadhar. The instructions issued cannot be held to be in excess of the authority of Sri V. Gangadhar. From the evidence of Sri V. Gangadhar, the sanitary inspector, it is clearly made out that he had instructed the lorry driver Sri Edwin Chalat to remove the entire accumulation of rubbish. Therefore, I find that there is no force in the contention urged on behalf of the driver that from the statement made by him in Exhibit M-10, it should not be understood that he had been instructed to see that the lorry is loaded fully. It is clear that the driver was aware that it was one of his duties to see that the lorry is loaded to its full capacity. Therefore, I find that the finding reached by the enquiry officer, *i.e.*, the Health Officer, that the driver has neglected his duties, cannot be said to be either perverse or without any basis. It is found that the lorry had been loaded only to its 1/6 capacity. Therefore, it is contended on behalf of the management that pecuniary loss has been caused because the lorry is run carrying only 1/6 load whereas a larger amount of rubbish could have been carried with the same amount of petrol used for the lorry. Thus, it is contended that pecuniary loss is also caused though the extent of the pecuniary loss is not capable of being determined. It is true that pecuniary loss to some extent has been caused to the Municipality. Therefore, it is clear that the driver was negligent in not requiring the lorry mazdoors to load the lorry to its full capacity. Hence, I find that the finding recorded by the Enquiry Officer that the charges Nos. 2, 5 and 6 are proved, is correct. This is my finding on issue No. 3.

25. The next question to be considered is if the suspension of the first party workman from 26th June 1969 till 26th June 1970 is legal. By the memo Exhibit M-1, the driver Edwin Chalat is kept under suspension. It is dated 26th June 1969. By a letter, dated 25th June 1969 Exhibit M-5, the Municipal Health Officer has

reported to the Director of Health and Family Planning Services Bangalore, that the driver Edwin Chalat was kept under suspension pending enquiry into his conduct, with effect from 27th June 1969 and the period of suspension expires on 27th September 1969. Further it is stated that it is not possible to complete the enquiry within the time limit specified in first para of Regulation 30 of the Public Health Regulations. He has therefore requested the Director of Health and Family Planning Services to grant extension of time (suspension) for three months to enable him to complete the enquiry. Regulation No. 30 reads as follows:

> "The Health Officer may suspend any member of the Public Health establishment of a local authority pending enquiry into his conduct for a period not exceeding three months; provided that in exceptional cases, when the inquiry cannot be completed within three months from the date of suspension, the member of the Public Health Establishment may be suspended for a further period not exceeding three months with the previous sanction of the appellate authority referred to in Regulation 34(i)."

A Copy of the same is available in the file.

26. It is urged on behalf of the workman that the workman had been kept under suspension by the Health Officer for a period of more than three months, and therefore, the order is illegal. The learned representative for the management urged that the Health Officer took every precaution to get the approval of the competent authority in time and his action was *bonafide* The question whether the Health Officer has acted *bonafide* or not, does not arise for consideration. The material question to be considered is whether the order keeping the driver Edwin Chalat under suspension for a period of more than three months is valid. In A.I.R. 1964 Patna P. 168 it is ruled that, an order of suspension passed long before the date of the charge-sheet and continued beyond 4 months without obtaining the approval of the higher authority concerned is not sustainable under the terms of Cl.(*b*) of Rule 1711 of the Railway Establishment Code. Further it is also held that compliance with the procedure as laid down in Rule 1711 is essential for the validity of any order passed for suspension under the Railway Establishment Code. In the present case the order of suspension is passed under Regulation 30 and compliance with the procedure laid down in regulation 30 is essential for the validity of the order. It is clear that the Director of Health and Family Planning Services, Bangalore, has not given sanction to the order of suspension made by the Municipal Health Officer. Therefore, I find that the order keeping the driver Edwin Chalat under suspension for the period exceeding three months is illegal. This is my finding on additional issue No.

27. The 4th issue raised in this case is as follows :—

"Whether the punishment of termination of the service of the Ist party workman is grossly disproportionate to the gravity of mis-conduct and is unconscionable ? If so, what will be its effect on this reference ?

Six charges have been framed against the driver workman as noted in Exhibit M-13. The provisional order made by the Health Officer is Exhibit M-11 and the final order is Exhibit M-13. I have found that charges 1, 3 and 4 have not been proved. With respect to the charges 2, 5 and 6 it is proved that the driver has failed to instruct the lorry mazdoors to load the lorry to its full capacity and therefore, he was negligent in his duties. The loss caused to the municipality is not determined in terms of money, but it is true that some loss has been caused to the Municipality because the lorry had not been loaded to its full capacity.

28. I have earlier found that the Health Officer who is said to have detected the defects has not been examined, in the domestic enquiry. He has himself proceeded to make an enquiry and he has of course relied on his own observations and his own knowledge. In the preliminary order Exhibit M-11, he has proposed an order of removal from service of the driver Edwin Chalat after finding that he is guilty of negligence. It is also mentioned that the driver has destroyed the particular sheet in his diary on 25th June 1969. Further it is observed that the driver had been taken to task on a previous occasion for misconduct and he was under suspension and awarded censure for misconduct and negligence of duty. Taking all these facts and circumstances into consideration, the enquiry officer proposed that he should be removed from service. In his order Exhibit M-13 it is recorded as follows :—

"At the time of enquiry, the driver has admitted in cross-examination that he was warned by the Health Officer several times formerly for his failure to see that the P.H. vehicle entrusted to him was properly loaded, and that during these occasions he did not reply that it was not his duty, but has assured that he would attend to it in future. The driver has also admitted in cross-examination that on 25th June 1969 he misbehaved with the Health Officer when questioned about the lorry trips and acted indifferently. He has similarly admitted that on a former occasion he mis-behaved with the Municipal Commissioner and the Health Officer near Kankanady market while replying them, and that he was not issued with a memo calling for his explanation. All these would go to show that the driver has been let off for negligence of duty and misbehaviour on prior occasions expecting that

he would improve. On due consideration of all the materials placed before me, I hold all the charges framed against the driver as proved against him."

29. I find from the statement Exhibit M-10 that the driver has not admitted that he committed any misconduct when he was questioned by the Municipal Commissioner and Health Officer. His answer is as follows :—

"ನಾನು ಮುನ್ಸಿಪಲ್ ಕಮೀಷನರ ಹತ್ತಿರ ಮತ್ತು ಹೆಲ್ತ್ ಆಫೀಸರೊಡನೆ ಕಂಕನಾಡಿ ಮಾರ್ಕೆಟ್ಟಿನ ಬಳಿ ಮಾತನಾಡುವಾಗ ಒರಟು ರೀತಿಯಲ್ಲಿ ವರ್ತಿಸಿದ್ದು ಹೌದು. ಆದರೆ ನನಗೆ ಮೆಮೋ ಏನೂ ಕೊಡಲಿಲ್ಲ."

But the enquiry officer has recorded that the driver has admitted that he mis-behaved with the Municipal Commissioner and the Health Officer. This finding appears to be not correct. He has also taken into consideration that the driver has admitted that he mis-behaved with the Health Officer. It is also mentioned that there is no improvement in the work and conduct of the driver and that he does not deserve to be retained in service. Therefore, it is ordered that he shall be removed from service with effect from 27th June 1969.

30. It is true that the charges Nos. 1, 3 and 4 are not proved and with respect to the other charges, what is made out is that on 25th June 1969, he failed to give necessary instructions to the lorry mazdoors to load the lorry to its full capacity. Now I have found that while awarding punishment, the Health Officer has taken into consideration that all the charges have been proved and that there was no improvement in the conduct of the driver and that he has misconducted himself with the Municipal Commissioner and the Health Officer on a previous occasion and has therefore ordered what he shall be removed from service. In 1972 Labour and Industrial Cases P. 1141 Binny Limited *Vs.* their workmen, it is laid down by their Lordships of the Supreme Court as follows :—

> "Where a delinquent is charged of a particular misconduct but the dismissal order is passed as a result of the cumulative effect of the particular misconduct charged as well as the past lapses for which opportunity to explain was not given the order is not maintainable. In such a case it cannot be treated that two seperate charges have been framed against the delinquent and they are of such a serious nature that the finding of guilt on any one would warrant the dismissal of the delinquent from service. AIR 1963 SC 528 and (1963) 2 LLJ 78 (SC), Distinguished."

At page 1146 it is observed as follows :—

> "Although the enquiry officer found in fact that the respondent had behaved insolently towards the Warehouse Master, he did not come to the conclusion that this act of indiscipline on a solitary occasion was sufficient to warrant an order of dismissal. He expressly recorded that the delinquent had been guilty of absenting himself without leave, that he had taken 25 days sick leave in a span of six months and that 'much more than all this, he (the warehouse master) had let Kuppuswamy off only a month earlier for behaving insolently towards him purely because of request of the departmental workers' representative' and it is in these circumstances that the Manager did not consider the delinquent to be a person fit to be retained in service. The language of the order leaves no doubt in our mind that it was the cumulative effect of the lapses on the part of the respondent that had resulted in the order of termination of service. It was not a case where two separate charges had been framed against the delinquent and they were of such a serious nature that the finding of guilt on any one would warrant the dismissal of the delinquent from service."

31. It is found by their Lordships that the language of the order did not leave any doubt in their mind that it was the cumulative effect of the lapses on the part of the respondent that has resulted in the order of termination of service. In the present case, I have read both exhibits M-11 and M-13. In exhibit M-11 the enquiry officer proposed that the driver should be removed from service as there is no improvement in the work and conduct of the driver. In Exhibit M-13 also it is found that there is no improvement in the work and conduct of the driver and he does not deserve to be retained in service. In para 2 it is also found by the Enquiry Officer that the driver has admitted that he mis-behaved with the Municipal Commissioner and Health Officer, but what the driver has stated is that he has given some rough answers. It cannot be said that he has admitted that he misbehaved with the Municipal Commissioner and the Health Officer which would amount to misconduct. Taking all these facts and circumstances into consideration the Enquiry Officer has held that the driver is liable to be removed from service. Therefore, I find that the principles and tests laid down by their Lordships in Binny Limited *vs.* Their workmen, apply to the facts of the present case, and in this case also there in no doubt that it was the cumulative effect of the lapses on the part of the first party workman that had resulted in the order of termination of service. In these circumstances, I find that the order of dismissal of the workman from service cannot be upheld, though it is found that it is proved

duty and misbehaviour on prior occasions expecting that

that the driver workman has failed to instruct the lorry mazdoors to load the lorry to its full capacity.

32. I have earlier found that the order of suspension keeping the workman driver under suspension for a period of one year is illegal. In A.I.R. 1966 S.C.P. 951 it is laid down by their Lordships as follows :—

> "An order of dismissal with retrospective effect is in substance an order of dismissal as from the date of the order with the super-added direction that the order should operate retrospectively as from an anterior date. The two parts of the order are clearly severable. Assuming the second part of the order mentioning that dismissal would operate retrospectively is invalid, there is no reason why the first part of the order stating that the appellant is dismissed, should not be given the fullest effect. The Court cannot pass a new order of dismissal but surely it can give effect to the valid part of the order. (1957) 61 Cal. WN 880 and AIR 1961 Cal. 626, Overruled : AIR 1954 Cal. 340, Explained."

It is true that the order of dismissal could have been given effect to from the date of the order and an order could have been passed that for the period for which the driver was kept under suspension, he should be paid his salary because the two parts of the order are severable. But now I have found that the punishment imposed in the case cannot be sustained. In Binny Limited *vs.* Their workmen the Labour Court set aside the order of dismissal while accepting the finding of the domestic tribunal that Kuppuswamy was guilty of the misconduct on the ground that Kuppuswamy was not given an opportunity to challenge the statement of one Veeraraghavan regarding his past record of service nor was he given any opportunity to say whether Veeraraghavan's statement was true or false or reasonably explainable. This finding is upheld by their Lordships of the Supreme Court. I have earlier stated the law laid down by their Lordships of the Supreme Court in Binny Limited *vs.* Their Workmen. From the law laid down by their Lordships it is clear that if an order of termination is the cumulative effect of the lapses on the part of the respondent and not as a result of the findings on the charges proved, then such as order is not maintainable. I have found in this case that the enquiry officer has come to the conclusion that the driver has misconducted himself with the [illegible]al Commissioner and the Health Officer though he has stated that he gave some answers roughly. He has also relied on the previous lapses of the driver even though sufficient opportunity was not given to the driver to give his explanation. It is also found in this case that the workman driver has been examined on 30th August 1969. The witnesses have been examined on 26th September 1969

as evidenced by exhibits M-6, M-7 and M-9. Thus, the worker has been examined earlier before recording the evidences for the management. For all the reasons stated above, I find that the order of punishment dismissing the driver workman is not justified. In the result, I find that the order terminating the services of the driver has to be set aside and it is necessary to direct the second party management to reinstate the driver Sri Edwin Chalat with effect from 27th June 1969 with consequential benefits. It is further found that it is lawful for the municipality to deduct the amount that has been paid to the driver while he was under suspension while paying the backwages.

33. In the result, I pass an Award, holding that the order of dismissal of the driver Sri Edwin Chalat is not justifiable and set aside the same. The second party shall reinstate the driver Sri Edwin Chalat in service with effect from 27th June 1969 with all consequential benefits. It is lawful for the second party to deduct the amount that has been paid to the driver Sri Edwin Chalat while he was under suspension, while paying backwages. The parties shall bear their own costs.

MANGALORE,
Dated: 30*th September* 1972.

B. HANUMANTHAIAH,
Presiding Officer,
Labour Court, Mangalore.

ORDER

Bangalore, dated 24th October 1972

S.O. 1. WHEREAS by State Government Order No. FCL 359 LLD 71, dated 4th August 1971, the Industrial Dispute between the workmen and the management of Mangalore City Municipality, Mangalore was referred to the Labour Court, Mangalore for adjudication.

AND, WHEREAS the Labour Court has submitted to the State Government its award in respect of the said Industrial Dispute;

NOW THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said award as above, in the *Mysore Gazette*.

[No. FCL 190 LLA 72.]

By Order and in the name of the Governor of Mysore,

ANIRUDHA DESAI,
Under Secretary to Government,
Food, Civil Supplies and
Labour Department.